IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2241 OF 2005

Kalu Pandit Kokate & others. ... Petitioners
Versus.
The State of Maharashtra. ... Respondents.

Shri M.S.Karnik for the Petitioners.
Shri A.S.Gadkari, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 20th Sept., 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The challenge in this petition filed by the accused is to the order dated 23rd August 2005 passed by the learned Sessions Judge below application at Exh.48. The Defence witness No.1 Dr.Jain was summoned by the learned trial Judge. It appears that the said witness was present on the relevant date from 11.00 a.m. to 11.45 a.m. Till 11.45. a.m., Advocate for the Petitioner was not present and therefore, on the request made by the witness, the learned trial Judge discharged the witness. Therefore, an application was made at Exh.48 for issuing fresh witness summons to the said witness which came to be rejected by the impugned order.

3. The learned Advocate for the Petitioner submitted that the Advocate for the Petitioner reached the Court

at 11.55 a.m. and by that time the witness was already discharged. He submitted that the evidence of the said witness is vital for the defence and therefore, one more opportunity deserves to be granted. The learned A.P.P. supported the impugned order by pointing out that the Advocate for the Petitioner did not attend the Court in time and therefore, the learned Judge had no option but to discharge the witness as the witness was a Medical Practitioner.

4. I have considered the submissions. It appears that the Advocate for the Petitioner was not present in the trial Court till 11.45 a.m. when the witness was discharged. However, it appears that he appeared subsequently and applied for recall of the witness. If the Advocate for the Petitioner could not attend the Court in time, the Petitioner, who is an accused, cannot be made to suffer. It is true that inconvenience will be caused to the witness. However, the witness can always be compensated by ordering payment of costs. In my view, the learned trial Judge ought to have adopted a liberal approach and permitted the witness summons to be issued to the defence witness. Hence the impugned order deserved to be set aside.

5. Hence the following order is passed:

(i) The impugned order dated 25th August 2005

is quashed and set aside.

(ii) The learned trial Judge will issue a fresh witness summons to D.W.1 Dr.Jain returnable on a date which is suitable to the trial Court.

(iii) The Petitioner is directed to deposit in the trial Court costs of Rs.500/- payable to the witness within a period of two weeks from today.

(iv) Fresh witness summons will be issued only if the Petitioner deposits the amount of costs within the period of two weeks. If the amount is not deposited, the impugned order will stand. If the amount of costs is deposited and if Dr.Jain appears before the Court, he will be permitted to withdraw the said amount.

(v) Rule is made absolute in the above terms.

(vi) The parties and the concerned Court to act on an authenticated copy of this order.

Judge.